



**FREDERICK COUNTY PLANNING
COMMISSION
July 13, 2016**

TITLE: **Ballenger Run DRRA Amendment**

FILE NUMBER: **DRRA 12-07 (A)**

REQUEST: **Finding of Consistency with
Comprehensive Plan**

The proposed DRRA amendment will allow the use of new provisions in the Moderately Priced Dwelling Unit ordinance.

PROJECT INFORMATION:

LOCATION: East side Ballenger Creek Pike

ZONE: PUD

REGION: Frederick

WATER/SEWER: S-3/W-3

COMP. PLAN/LAND USE: Medium Density Residential

APPLICANT/REPRESENTATIVES: (as applicable)

APPLICANT: SeD Maryland Development LLC

OWNER: SeD Maryland Development LLC

ENGINEER:

ARCHITECT:

ATTORNEY: Bruce Dean

STAFF: Jim Gugel, Planning Director

RECOMMENDATION: Find consistent with the Comprehensive Plan

Enclosures:

Staff report

DRRA amendment and exhibits

June 28, 2016

Frederick County Planning & Permitting Division

Staff Report

Ballenger Run Development Rights and Responsibilities Agreement Amendment
DRRA 12-07 (A)

ISSUE

A petition to amend the Development Rights and Responsibility Agreement (DRRA) for the Ballenger Run PUD is presented to the Planning Commission for a finding of consistency with the County Comprehensive Plan. If approved, the proposed amendment will allow the Applicant to use new provisions of Chapter 1-6A (Moderately Priced Dwelling Units) if the Applicant chooses to build MPDUs in the PUD.

BACKGROUND

A petition to amend the Ballenger Run Development Rights and Responsibilities Agreement (DRRA) was submitted by the Applicant, SeD Maryland Development LLC, on May 4, 2016. The petition was reviewed and accepted by the County Executive, which allows it to proceed through reviews by the Planning Commission and County Council.

Ballenger Run Development History

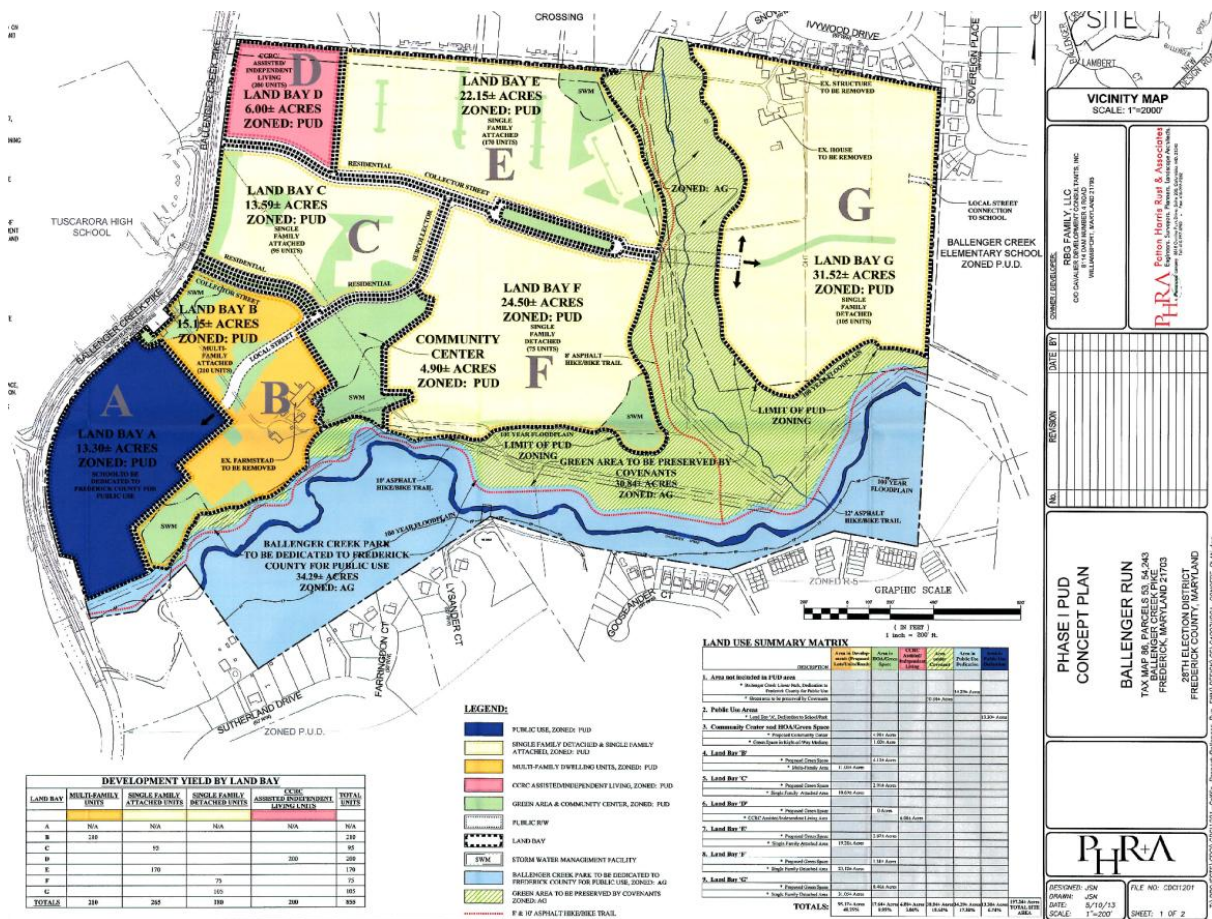
The Ballenger Run property (197 acres) was rezoned (R-05-09) from Agricultural to Planned Unit Development (PUD) in 2006 (Ord. # 06-33-429, effective September 28, 2006). The Phase I Plan was approved for 970 dwellings, all age-restricted. The project did receive some preliminary subdivision plan approvals for a portion of the project.



A rezoning application, R-05-09 (A), to revise the Ballenger Run PUD Phase I Plan was filed on December 28, 2012. This application proposed removal of the age-restriction condition and reduction of the proposed number of dwellings to 855. Concurrent with the rezoning review was the filing of a petition (December 27, 2012) to enter into a DRRA, which also included the Adequate Public Facilities review. The revised Phase I Plan for the PUD was approved on October 1, 2013 and became effective on October 17, 2013 (Ord. # 13-20-648). The Phase I Plan includes the following components:

- Approval for a total of 855 dwellings with the following dwelling types:
 - Single-Family – 180 dwellings
 - Townhouses – 265 dwellings
 - Multi-Family – 210 units
 - Assisted/Independent Living – 200 units
- Dedication of a 14 acre elementary school site
- Dedication of 34 acres of park land along Ballenger Creek to the county

The project received Preliminary Subdivision/Site Plan approval (Phase II) from the Planning Commission on October 8, 2014.



The DRRA (DRRA 12-07) was approved by the Board of County Commissioners (BOCC) on October 1, 2013 and became effective on October 17, 2013. A summary of the DRRA follows.

Development Rights

- Maintain the Planned Unit Development (PUD) zoning with a maximum of 855 dwelling units.
- Maintain the original age-restricted approvals until a new Phase II approval is given to the non age-restricted development.
- Maintain or obtain other approvals based on current regulations or, if applicable, the regulations in effect when the approvals were granted.
- Receive revised APFO approval (including an Amended and Restated LOU) for the PUD concurrent with the DRRA approval.
- Proceed with project build out for the various phases as outlined in the DRRA.
- Freeze current County development regulations for the duration of the DRRA.
- Maintain the terms of the DRRA for a period of 20 years.

Development Responsibilities

- Construct or pay for/guarantee road improvements as detailed in the Amended and Restated LOU, including but not limited to: improvements to Ballenger Creek Pike.
- Construct or pay for/guarantee water and sewer improvements as detailed in the Amended and Restated LOU.
- Pay the APFO school construction fees (based on failure at the elementary and high schools) as detailed in the Amended and Restated LOU. Based on current rate and unit mix, this would provide approximately \$3.4 million in mitigation fees. (Note this is in addition to the school impact fees which would generate approximately \$6.3 million based on the current rate and unit mix)
- Remit the payment in lieu fees under the Moderately Priced Dwelling Unit regulations.
- Pay all normal and customary development review fees and impact fees.
- Dedicate a +/-13 acre elementary school site.
- Construct multi-use trails along Ballenger Creek and Pike Branch.
- Dedicate 34.3 acres of parkland (subject to approval by the county) along Ballenger Creek.

PROPOSED DRRA AMENDMENT

The Applicant is proposing an amendment to the DRRA that will allow use of recent amendments to the Chapter 1-6A - Moderately Priced Dwelling Units (MPDU) of the County Code. Bill 15-06, which became effective on September 5, 2015, amended the MPDU ordinance to allow certain requirements of federal, state, or local government affordable rental housing programs to replace and fulfill the County requirements for Moderately Priced Dwelling Units.. Since the current DRRA “freezes” the County laws in place as of October 17, 2013, an amendment is necessary to allow the Applicant to use these new provisions of Chapter 1-6A if the Applicant chooses to build MPDUs rather than use the payment in lieu fees to satisfy the MPDU requirement for the project.

The Applicant proposes to construct a minimum of 107 MPDU’s as rental units. The remaining 103 multi-family units approved in the project (210 total multi-family units) may be either market rate rental units or condominiums. Although this DRRA amendment petition includes a draft MPDU agreement as an exhibit, it will be used only if the Applicant does not choose to build MPDUs.

FINDING OF CONSISTENCY WITH THE COMPREHENSIVE PLAN

The Land Use Article of the Annotated Code of Maryland provides general requirements with regard to a finding of consistency with a comprehensive plan. Section 1-303 *Consistency – General requirement* of the Land Use Article further defines consistency with a comprehensive plan to mean “ an action taken that will further, and not be contrary to the following items in the plan:

- 1) Policies;
- 2) Timing of the implementation of the plan;
- 3) Timing of development;
- 4) Timing of rezoning;
- 5) Development patterns;
- 6) Land uses; and
- 7) Densities or intensities

The following excerpt is from the Maryland Department of Planning Models and Guidelines Document titled: ‘*Achieving Consistency under the Planning Act*’. It states:

The fundamental concept of “consistency” under the new Planning Act is that land use regulations and decisions should agree with, and implement what the Plan recommend and advocates. A consistent regulation or decision may show clear support for the Plan. It may also be neutral – but it should never undermine the Plan.

County Comprehensive Plan

Staff would find that the proposed DRRA amendment, DRRA 12-07 (A) is consistent with the following policies under the Housing Element (page 07-30) of the County Comprehensive Plan.

- HO-P-01 Support construction of affordable housing in order to address projected shortfalls in availability.
- HO-P-02 Continue to support efforts that promote and provide accessible, affordable housing options to residents.
- HO-P-03 Reasonably accommodate the housing needs of all residents in an effort to allow them the option of remaining in the County.
- HO-P-05 Encourage higher density, mixed-use and mixed-income development in designated growth areas where a balance of housing types and styles are offered to meet the diverse housing needs of residents.

RECOMMENDATION

Staff finds the proposed Ballenger Run DRRA amendment, DRRA 12-07 (A) to be consistent with the County Comprehensive Plan.

PLANNING COMMISSION ACTION

MOTION TO FIND CONSISTENT

I move that the Planning Commission find the Ballenger Run DRRA amendment, DRRA 12-07 (A) to be **consistent** with the Frederick County Comprehensive Plan based on the findings and conclusions of the staff report.

MOTION TO FIND INCONSISTENT

I move that the Planning Commission find the Ballenger Run DRRA amendment, DRRA 12-07 (A) to be **inconsistent** with the Frederick County Comprehensive Plan based on the following findings and conclusions: